

Definitions

¹[132A. In this Chapter,—

(a) the expression “armed forces” means the military, naval and air forces, operating as land forces and includes any other armed forces of the Union so operating ;

(b) “officer”, in relation to the armed forces, means a person commissioned, gazetted or in pay as an officer of the armed forces and includes a junior commissioned officer, a warrant officer, a petty officer and a non-commissioned officer].

CHAPTER X.

PUBLIC NUISANCES.

Conditional
order for
removal of
nuisance.

133. (1) Whenever a District Magistrate, a Sub-Divisional Magistrate or a Magistrate of the first class considers, on receiving a police-report or other information and on taking such evidence (if any) as he thinks fit,

that any unlawful obstruction or nuisance should be removed from any way, river or channel which is or may be lawfully used by the public, or from any public place, or

that the conduct of any trade or occupation, or the keeping of any goods or merchandise, is injurious to the health or physical comfort of the community, and that in consequence such trade or occupation should be prohibited or regulated or such goods or merchandise should be removed or the keeping thereof regulated, or

that the construction of any building, or the disposal of any substance, as likely to occasion conflagration or explosion, should be prevented or stopped, or

that any building, tent or structure, or any tree is in such a condition that it is likely to

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²[133. (1) Whenever a ³[*Presidency Magistrate specially empowered by the State Government in this behalf or a District Magistrate or a Sub-Divisional Magistrate*] considers, on receiving a police-report or other information and on taking such evidence (if any) as he thinks fit,

that any unlawful obstruction or nuisance should be removed from any way, river or channel which is or may be lawfully used by the public, or from any public place, or

that the conduct of any trade or occupation or the keeping of any goods or merchandise, is injurious to the health or physical comfort of the community, and that in consequence such trade or occupation should be prohibited or regulated or such goods or merchandise should be removed or the keeping thereof regulated, or

that the construction of any building, or the disposal of any substance, as likely to occasion conflagration or explosion, should be prevented or stopped, or

¹ Inserted by Act 64 of 1952, s. 7.

² Substituted by the Code of Criminal Procedure (Amendment) Act, 1923 (18 of 1923), s. 24, for original s. 133.

³ Substituted by Bom. 23 of 1951, s. 2 and Schedule Part I, for “District Magistrate, a Sub-Divisional Magistrate or a Magistrate of the first class”.

fall and thereby cause injury to persons living or carrying on business in the neighbourhood or passing by, and that in consequence the removal, repair or support of such building, tent or structure, or the removal or support of such tree, is necessary, or

that any tank, well or excavation adjacent to any such way or public place should be fenced in such manner as to prevent danger arising to the public, or

that any dangerous animal should be destroyed, confined or otherwise disposed of,

such Magistrate may make a conditional order requiring the person causing such obstruction or nuisance, or carrying on such trade or occupation, or keeping any such goods or merchandise, or owning, possessing or controlling such building, tent, structure, substance, tank, well or excavation, or owning or possessing such animal or tree, within a time to be fixed in the order,

to remove such obstruction or nuisance ; or

to desist from carrying on, or to remove or regulate in such manner as may be directed, such trade or occupation ; or

to remove such goods or merchandise, or to regulate the keeping thereof in such manner as may be directed ; or

to prevent or stop the erection of, or to remove, repair or support, such building, tent or structure ; or

to remove or support such tree ; or

to alter the disposal of such substance ; or

to fence such tank, well or excavation, as the case may be ; or

that any building, tent or structure, or any tree is in such a condition that it is likely to fall and thereby cause injury to persons living or carrying on business in the neighbourhood or passing by, and that in consequence the removal, repair or support of such building, tent or structure, or the removal or support of such tree is necessary, or

that any tank, well or excavation adjacent to any such way or public place should be fenced in such manner as to prevent danger arising to the public, or

that any dangerous animal should be destroyed, confined or otherwise disposed of,

such Magistrate may make a conditional order requiring the person causing such obstruction or nuisance, or carrying on such trade or occupation, or keeping any such goods or merchandise, or owning, possessing or controlling such building, tent, structure, substance, tank, well, or excavation, or owning or possessing such animal or tree, within a time to be fixed in the order,

to remove such obstruction or nuisance ; or

to desist from carrying on, or to remove or regulate in such manner as may be directed, such trade or occupation ; or

to remove such goods or merchandise, or to regulate the keeping thereof in such manner as may be directed ; or

to prevent or stop the erection of, or to remove, repair or support, such building, tent or structure ; or

to remove or support such tree ; or

to alter the disposal of such substance ; or

to destroy, confine or dispose of such dangerous animal in the manner provided in the said order;

or, if he objects so to do,

to appear before himself or some other Magistrate of the first or second class at a time and place to be fixed by the order, and move to have the order set aside or modified in the manner hereinafter provided.

to fence such tank, well or excavation, as the case may be; or

to destroy, confine or dispose of such dangerous animal in the manner provided in the said order;

or, if he objects so to do,

[to appear before himself or some other Executive Magistrate] at a time and place to be fixed by the order, and move to have the order set aside or modified in the manner hereinafter provided.

(2) No order duly made by a Magistrate under this section shall be called in question in any Civil Court.

Explanation.—A 'public place' includes also property belonging to the State, camping grounds and grounds left unoccupied for sanitary or recreative purposes.

Service or
notification
of order.

134. (1) The order shall, if practicable, be served on the person against whom it is made, in manner herein provided for service of a summons.

(2) If such order cannot be so served, it shall be notified by proclamation, published in such manner as the ²[State] Government may by rule direct, and a copy thereof shall be stuck up at such place or places as may be fittest for conveying the information to such person.

Person to
whom order
is addressed
to obey or
show cause
or claim jury.

135. The person against whom such order is made shall—

(a) perform, within the time ⁴[and in the manner] specified in the order, the act directed thereby; or

(b) appear in accordance with such order and either show cause against the same, or apply to the Magistrate by whom it was made to appoint a jury to try whether the same is reasonable and proper.

Consequence
of his failing
to do so.

136. If such person does not perform such act or appear and show cause or apply for the appointment of a jury as required by section 135, he shall be liable to the penalty prescribed in that behalf in section 188 of the Indian Penal Code, and the order shall be made absolute.

XLV
of
1860.

Procedure
where he
appears to
show cause.

137. (1) If he appears and shows cause against the order, the Magistrate shall take evidence in the matter as in a summons-case.

(2) If the Magistrate is satisfied that the order is not reasonable and proper, no further proceedings shall be taken in the case.

(3) If the Magistrate is not so satisfied, the order shall be made absolute.

¹ Substituted by Bcm. 23 of 1951, s. 2 and Schedule Part I, for "to appear before himself or some other Magistrate of the first or second class".

² Substituted by the A. O. 1937 for "L. G.".

³ Substituted by the A. O. 1950 for "Provincial".

⁴ Inserted by the Code of Criminal Procedure (Amendment) Act, 1923 (18 of 1923), s. 25.

138. (1) On receiving an application under section 135 to appoint a jury, the Magistrate shall— Procedure where he claims jury.

(a) forthwith appoint a jury consisting of an uneven number of persons not less than five, of whom the foreman and one-half of the remaining members shall be nominated by such Magistrate, and the other members by the applicant ;

(b) summon such foreman and members to attend at such place and time as the Magistrate thinks fit ; and

(c) fix a time within which they are to return their verdict.

(2) The time so fixed may, for good cause shown, be extended by the Magistrate.

139. (1) If the jury or a majority of the jurors find that the order of the Magistrate is reasonable and proper as originally made, or subject to a modification which the Magistrate accepts, the Magistrate shall make the order absolute, subject to such modification (if any). Procedure where jury finds Magistrate's order to be reasonable.

(2) In other cases no further proceedings shall be taken under this Chapter.

139A. (1) Where an order is made under section 133 for the purpose of preventing obstruction, nuisance or danger to the public in the use of any way, river, channel, or place, the Magistrate shall, on the appearance before him of the person against whom the order was made, question him as to whether he denies the existence of any public right in respect of the way, river, channel or place, and if he does so, the Magistrate shall, before proceeding under section 137 or section 138, inquire into the matter. Procedure where existence of public right is denied.

(2) If in such inquiry the Magistrate finds that there is any reliable evidence in support of such denial, he shall stay the proceedings until the matter of the existence of such right has been decided by a competent Civil Court ; and, if he finds that there is no such evidence, he shall proceed as laid down in section 137 or section 138, as the case may require.

(3) A person who has, on being questioned by the Magistrate under sub-section (1), failed to deny the existence of a public right of the nature therein referred to, or who, having made such denial, has failed to adduce reliable evidence in support thereof, shall not in the subsequent proceedings be permitted to make any such denial, nor shall any question in respect of the existence of any such public right be inquired into by any jury appointed under section 138.]

140. (1) When an order has been made absolute under section 136, section 137 or section 139, the Magistrate shall give notice of the same to the person against whom the order was made, and shall further require him to perform the act directed by the order within a time to be fixed in the notice, and inform him that, in case of disobedience, he will be liable to the penalty provided by section 188 of the Indian Procedure on order being made absolute.

XLV Penal Code.

1860. (2) If such act is not performed within the time fixed, the Magistrate may cause it to be performed, and may recover the costs of performing it, either by the sale of any building, goods or other property removed by his order, or by the distress and sale of any other moveable property of such person within or without the local limits of such Magistrate's jurisdiction. If such other property is without such limits, the order shall authorize its attachment and sale when endorsed by the Magistrate within the local limits of whose jurisdiction the property to be attached is found. Consequences of disobedience to order.

(3) No suit shall lie in respect of anything done in good faith under this section.

¹ Section 139A ins. by Act 18 of 1923, s. 26.

Procedure on failure to appoint jury or omission to return verdict.

141. If the applicant, by neglect or otherwise, prevents the appointment of the jury, or if from any cause the jury appointed do not return their verdict within the time fixed or within such further time as the Magistrate may in his discretion allow, the Magistrate may pass such order as he thinks fit, and such order shall be executed in the manner provided by section 140.

Injunction pending inquiry.

142. (1) If a Magistrate making an order under section 133 considers that immediate measures should be taken to prevent imminent danger or injury of a serious kind to the public, he may, whether a jury is to be, or has been, appointed or not, issue such an injunction to the person against whom the order was made, as is required to obviate or prevent such danger or injury pending the determination of the matter.

(2) In default of such person forthwith obeying such injunction, the Magistrate may himself use, or cause to be used, such means as he thinks fit to obviate such danger or to prevent such injury.

(3) No suit shall lie in respect of anything done in good faith by a Magistrate under this section.

Magistrate may prohibit repetition or continuance of public nuisance.

143. A District Magistrate or Sub-Divisional Magistrate or any other Magistrate empowered by the State Government or the District Magistrate in this behalf may order any person not to repeat or continue a public nuisance, as defined in the Indian Penal Code or any special or¹ local law.

Magistrate may prohibit repetition or continuance of public nuisance.

143. ¹[A Presidency Magistrate specially empowered by the State Government in this behalf or a District Magistrate or a Sub-Divisional Magistrate or any Executive Magistrate empowered either by the State Government or the District Magistrate in this behalf] may order any person not to repeat or continue a public nuisance, as defined in the Indian Penal Code or any special or² local law.

CHAPTER XI.

TEMPORARY ORDERS IN URGENT CASES OF NUISANCE OR APPREHENDED DANGER.

Power to issue order absolute at once in urgent cases of nuisance or apprehended danger.

144. (1) In cases where, in the opinion of a District Magistrate, a Chief Presidency Magistrate, Sub-Divisional Magistrate or of any other Magistrate, (not being a Magistrate of the third class) specially empowered by the State Government or the Chief Presidency Magistrate or the District Magistrate to act

Power to issue order absolute at once in urgent cases of nuisance or apprehended danger.

144. (1) In cases where, in the opinion of a District Magistrate, a Chief Presidency Magistrate, ²[the Commissioner of Police] Sub-Divisional Magistrate, ³[or of any other Executive Magistrate] specially empowered by the ⁴[State] Government] or the Chief Presidency Magistrate or the District Magistrate

¹ Substituted by Bom. 23 of 1951, s. 2 and Schedule Part I, for "A District Magistrate or Sub-Divisional Magistrate, or any other Magistrate empowered by the State Government or the District Magistrate in this behalf".

² Inserted by Bom. 34 of 1953, s. 5.

³ Substituted by Bom. 23 of 1951, s. 2 and Sch. Pt. I, for "or of any other Magistrate (not being a Magistrate of the third class)".

⁴ Substituted by the A. O. 1937 for "L. G.".

⁵ Substituted by the A. O. 1950 for "Provincial".